

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL**

1. TRANSMITTAL NUMBER:  
03-014

2. STATE  
Kentucky

FOR: HEALTH CARE FINANCING ADMINISTRATION

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE  
SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR  
HEALTH CARE FINANCING ADMINISTRATION  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE  
September 1, 2003

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN

☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN

☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:  
42 CFR 433.36

7. FEDERAL BUDGET IMPACT:  
a. FFY 2003 \$ (225,207)  
b. FFY 2004 \$ (2.7 million)

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Attachment 4.17-A pages 1 - 4

Pages 53 thru 53e

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION  
OR ATTACHMENT (If Applicable):

~~None~~

Page 53, Page 53a

10. SUBJECT OF AMENDMENT: Liens and Recoveries

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☒ OTHER, AS SPECIFIED: Review delegated  
to Commissioner, Department for Medicaid  
Services

12. SIGNATURE OF STATE AGENCY OFFICIAL:

Mike Robinson

13. TYPED NAME: Mike Robinson

14. TITLE: Commissioner, Department for Medicaid Services

15. DATE SUBMITTED: 8/22/03

16. RETURN TO:

Frances McGraw  
Eligibility Policy Branch  
Department for Medicaid Services  
275 East Main Street 6W-C  
Frankfort, Kentucky 40621

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED:  
August 22, 2003

18. DATE APPROVED:  
November 19, 2003

**PLAN APPROVED - ONE COPY ATTACHED**

19. EFFECTIVE DATE OF APPROVED MATERIAL:  
September 1, 2003

20. SIGNATURE OF REGIONAL OFFICIAL:

Susan Guerdon

21. TYPED NAME:  
Susan Guerdon

22. TITLE: Acting Associate Regional Administrator  
Division of Medicaid & Children's Health

23. REMARKS:

Approved with the following changes to Items 8 and 9 (Authorized by SA):  
Item 8: Add "Pages 53 thru 53e"  
Item 9: Add "Page 53, Page 53a"  
Item 9: Delete "None"

Revision: HCFA-PM-95-3 (MB)  
May 1995

Revised

# STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Kentucky

## Citation

42 CFR 433.36(c)  
1902(a)(18) and  
1917(a) and (b) of  
the Act

## 4.17 Liens and Adjustments or Recoveries

### (a) Liens

— The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

The State complies with the requirements of section 1917(a) of the Act and regulations at 42 CFR 433.36(c)-(g) with respect to any lien imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.

— The State imposes liens on real property on account of benefits incorrectly paid.

— The State imposes TEFRA liens 1917(a)(1)(B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income required for personal needs.

The procedures by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A. (NOTE: If the State indicates in its State plan that it is imposing TEFRA liens, then the State is required to determine whether an institutionalized individual is permanently institutionalized and afford those individuals notice, hearing procedures, and due process requirements.)

— The State imposes liens on both real and personal property of an individual after the individual's death.

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May 1995

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# STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

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## (b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36 (h)-(i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.

       Adjustments or recoveries are made for all other medical assistance made on behalf of the individual.

- (2) X The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917(a)(1)(B) (even if it does not impose those liens).

- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services.

X In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:

Related physician services, Medicare cost-sharing, and Medicare premiums.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

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- (4) ☐ The State disregards assets or resources for individuals who receive or are entitled to receive benefits under a long term care insurance policy as provided for in Attachment 2.6-A, Supplement 8b.
- ☒ The State adjusts or recovers from the individual's estate on account of all medical assistance paid for nursing facility and other long term care services provided on behalf of the individual. (States other than California, Connecticut, Indiana, Iowa, and New York, which provide long term care insurance policy-based asset or resource disregard must select this entry. These five States may either check this entry or one of the following entries.)
- ☐ The State does not adjust or recover from the individual's estate on account of any medical assistance paid for nursing facility and other long term care services provided on behalf of the individual.
- ☐ The State adjusts or recovers from the assets or resources on account of medical assistance paid for nursing facility and other long term care services provided on behalf of the individual to the extent described below:

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(c) Adjustments or Recoveries: Limitations

The State complies with the requirements of section 1917(b)(2) or the Act and regulations at 42 CFR 433.36(h)-(i).

- (1) Adjustment or recovery of medical assistance correctly paid will be made only after the death of the individual's spouse, and only when the individual has no surviving child who is either under age 21, blind, or disabled.
- (2) With respect to liens on the home of any individual who the State determines is permanently institutionalized and who must as a condition of receiving services in the institution apply their income to their cost of care, the State will not seek adjustment or recovery of medical assistance correctly paid on behalf of the individual until such time as none of the following individuals are residing in the individual's home:
  - (a) A sibling of the individual (who was residing in the individual's home for at least one year immediately before the date that the individual was institutionalized), or
  - (b) A child of the individual (who was residing in the individual's home for at least two years immediately before the date that the individual was institutionalized) who establishes to the satisfaction of the State that the care the individual provided permitted the individual to reside at home rather than become institutionalized.
- (3) No money payments under another program are reduced as a means of adjusting or recovering Medicaid claims incorrectly paid.

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(d) ATTACHMENT 4.17-A

- (1) Specifies the procedures for determining that an institutionalized individual cannot be reasonably expected to be discharged from the medical institution and return home. The description of the procedure meets the requirements of 42 CFR 433.36(d).
- (2) Specifies the criteria by which a son or daughter can establish that he or she has been providing care, as specified under 42 CFR 433.36(f).
- (3) Defines the following terms:
  - estate (at a minimum, estate as defined under State probate law). Except for the grandfathered States listed in section 4.17(b)(3), if the State provides a disregard for assets or resources for any individual who received or is entitled to receive benefits under a long term care insurance policy, the definition of estate must include all real, personal property, and assets of an individual (including any property or assets in which the individual had any legal title or interest at the time of death to the extent of the interest and also including the assets conveyed through devices such as joint tenancy, life estate, living trust, or other arrangement),
  - individual's home,
  - equity interest in the home,
  - residing in the home for at least 1 or 2 years,
  - on a continual basis,
  - discharge from the medical institution and return home, and
  - lawfully residing.

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- (4) Describes the standards and procedures for waiving estate recovery when it would cause undue hardship.
- (5) Defines when adjustment or recovery is not cost-effective. Defines cost-effective and includes methodology or thresholds used to determine cost-effectiveness.
- (6) Describes collection procedures. Includes advance notice requirements, specifies the method for applying for a waiver, hearing and appeals procedures, and the time frames involved.

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Liens and Adjustments or Recoveries

- A. The Medicaid agency uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home as specified under regulations at 42 CFR 433.36(d):

Kentucky does not impose liens against property, therefore the specified determination is not applicable.

- B. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR 433.36(f):

Kentucky does not impose liens against property, therefore the specified criteria is not applicable.

- C. The Medicaid agency uses the following definitions:

Aged institutionalized individual - a recipient age fifty five (55) or older who received Nursing Facility (NF) services, Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled (ICF/MR/DD) services, Home and Community Based Services (HCBS) or Supports for Community Living (SCL) services with payment for these services made, wholly or in part, by the Medicaid Program.

Estate - all real and personal property or other assets in which the deceased recipient had a legal title or interest, to the extent of his or her interest, as defined for purposes of state probate law. In addition, it shall include all other assets in which the deceased individual had legal title or interest at the time of death, to the extent of his or her interest. Examples include assets conveyed to a survivor, heir or assign of the deceased recipient through joint tenancy, tenancy in common survivorship, life estate, living trust or other arrangement.

Estate representative - the court appointed fiduciary or the fiduciary's attorney, the recipient family member or other interested party who represents to the Medicaid agency in writing that he or she is the representative for the deceased Medicaid recipient's estate.

Period of institutionalization - the period of time an aged institutionalized or permanently institutionalized individual received Medicaid services.



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Liens and Adjustments or Recoveries (continued)

Permanently institutionalized – a Medicaid recipient residing in a nursing facility or intermediate care facility for the mentally retarded or developmentally disabled for six (6) months or more.

Recipient family member - the surviving spouse, child or sibling of a deceased Medicaid recipient.

Surviving child – a Medicaid recipient's living child under age 21, or a child who is blind or disabled as defined in 42 USC 1382c.

Undue hardship - The Medicaid agency determines that an undue hardship exists when an asset subject to recovery is the sole income-producing asset, family farm or business, conveyed to the surviving recipient family member. A sole income-producing asset shall not include residential real property producing income through a lease or rental arrangement.

- D. The Medicaid agency uses the following procedure to provide general notice to the Medicaid recipient or the recipient's representative at the time of application or reapplication for institutionalized services:

The Medicaid agency provides a written general notice to the recipient or the recipient's representative that explains the provisions of the estate recovery program. The general notice contains information regarding when an estate is subject to recovery, the type of charges that will be included in an estate recovery claim, how the executor or estate representative will be notified, and information about exemptions and limitations to estate recovery.

- E. The Medicaid agency uses the following collection procedures:

1. Upon the death of an institutionalized recipient, the institutional provider is required to notify the eligibility office within ten (10) days of the death. The eligibility office then notifies the Medicaid agency of the death.
2. The Medicaid agency calculates the total estate recovery claim by totaling the claims paid on behalf of a deceased recipient for any period of institutionalization. The amount of the claim includes the following:
  - a. Where applicable, the expenditures for Nursing Facility (NF) services, Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled (ICF/MR/DD) services; Home and Community Based Services (HCBS); or Supports for Community Living (SCL) services;
  - b. Costs of related prescription drugs, hospital services, related physician services, Medicare cost-sharing, or Medicare premiums; and

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Liens and Adjustments or Recoveries (continued)

- c. Any capitation payment made by the Medicaid agency to a managed care organization on behalf of the deceased recipient.
  - 3. The amount recovered shall not exceed the amount paid by the Medicaid agency on behalf of the deceased recipient for services received during periods of institutionalization.
- F. The Medicaid agency uses the following procedure to file its claim and provide notice of intent to recovery to the estate representative, family member or heir of the deceased Medicaid recipient:
- 1. The agency provides written notice to the estate representative, family member or heir of the deceased Medicaid recipient if the agency has such information. If no estate representative exists, notice shall be provided to the family members or heirs if the recipient has provided the agency with this information through the eligibility application process. The estate representative is responsible for notifying individuals who are affected by the proposed recovery.
  - 2. The notice includes the action the agency intends to initiate, the reason for the action, the amount of Medicaid's claim, exemptions and limitations to estate recovery, the address to contact the Medicaid agency and advises the representative to contact the Medicaid agency if more information is needed regarding Medicaid's claim. The notice advises the representative to respond to Medicaid's claim within 60 days.
  - 3. Included with the written notice is the general notice, as provided at the time of eligibility or recertification, advising the representative of the exemptions and the conditions that are considered when requesting an undue hardship exemption. The notice also contains a listing of the documentation the Medicaid agency will accept in proof of the request for an exemption.
- G. Estate recovery may be waived if either of the following two criteria is met:
- 1. The administrative cost of recovering from the estate is more than the total date-of-death value of the estate subject to recovery.
    - a. The administrative cost shall be comprised of the estimated financial equivalent of agency staff time and resources required to recover the full claim in any individual case.

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Liens and Adjustments or Recoveries (continued)

- b. This administrative cost shall be compared to actual date of death value, less any exemptions or limitations to recovery known at the time the estimate is made, including any payments made to contractors who may perform the recovery function. If the cost is equal or greater to the value subject to recovery, it shall be determined not cost effective to pursue recovery.
  - c. Based upon a review of historical data regarding the average value of cases, including extrapolated estimates of the expanded value of the estate under current rules, and the staff time and resources involved in securing recovery, the agency has determined that it is not cost effective to recover when the total date-of-death value of the estate is \$10,000 or less.
- 2. An undue hardship exists.
  - a. The estate representative shall apply for an undue hardship exemption by making a written request to the Medicaid agency within 30 days of receipt of Medicaid's notice of the claim, and must also provide documentation to substantiate an undue hardship exists.
  - b. Medicaid will issue a decision on the exemption request within 30 days of receipt of the request and all supporting documentation. If a hardship exemption is denied, an estate representative's may request an appeal within 30 days of the denial, and an administrative hearing shall be conducted.
  - c. An undue hardship shall not exist if the deceased recipient created the hardship by resorting to estate planning methods under which the recipient illegally divested assets to avoid estate recovery.
- H. The Medicaid agency may grant an exemption of the recovery provisions on a case-by-case basis to the extent of the anticipated cost of continuing education or health care needs of an estate heir. The estate representative shall submit to the Medicaid agency a written request for an exemption and provide verification of the cost of such exemption to the satisfaction of the Medicaid agency.
- I. A deceased recipient's estate shall be subject to recovery of Medicaid expenditures if it is adjudicated through a final administrative appeal process or court action that the recipient qualified for Medicaid fraudulently. If the recipient qualified for Medicaid benefits fraudulently, the exemptions or limitations established by administrative regulation shall not apply.
- J. The Division of Program Integrity, Recovery Operations Branch or its designee is responsible for collecting the payments, considering requests for exemptions, processing hearing requests and depositing funds in the appropriate Medicaid account.